In the Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-460

HIGHWAY AND LOCAL MOTOR FREIGHT DRIVERS LOCAL NO. 701, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

SUBURBAN TRANSIT CORP. AND H.A.M.L. CORP., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. The Board held, *inter alia,* that respondent Suburban Transit Corp. ("Suburban") violated Section 8(a)(1) and (2) of the National Labor Relations Act, 29 U.S.C. 158(a)(1) and (2), by entering into a new collective bargaining agreement with the United Transportation Union ("UTU") despite knowledge that representation petitions—supported by at least 30 percent of the employees in the bargaining unit—had been filed by the Teamsters[1] and an individual, Joseph Manga. The Board applied its *Midwest Piping* doctrine, 63 NLRB 1060, which holds that it is unlawful for an employer to recognize one of two

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[1]Highway and Local Motor Freight Drivers Local No. 701, affiliated with International Brotherhood of Teamsters.

competing unions where "a real question of representation is pending before the Board" (Pet. App. 13a-22a). The Board, *inter alia,* ordered Suburban to cease recognizing or contracting with "UTU", unless and until "UTU" has demonstrated its representative status in a Board-conducted election (Pet. App. 33a). The court of appeals, concluding that the filing of the representation petitions were not sufficient to create a "real question of representation," declined to sustain the Board's unfair labor practice finding and to enforce its order (Pet. App. 48a-49a).[2]

2. The Board believes that the court of appeals erred in rejecting its view that the filing of a representation petition which has sufficient merit to trigger formal proceedings raises a "real question of representation," so that an employer violates its duty of neutrality by recognizing one of two competing unions before the representation question has been resolved by the Board. The instant case does not, however, provide a good factual setting in which to present the underlying legal issue to this Court, since the chief negotiator for "UTU" was also a collaborator in the Teamsters' organizing effort (see Pet. App. 45a-48a, 49a, n. 6).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

DECEMBER 1974.

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[2]The court followed its earlier decision in *National Labor Relations Board* v. *Swift & Co.*, 294 F. 2d 285 (C.A. 3), where it held that the filing of a representation petition by a rival union plus the Board's administrative determination that a hearing thereon should be held do not, by themselves, afford the employer a reasonable basis for believing that the incumbent union no longer represents a majority, and thus render continued recognition of that union unlawful.